

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6723**

**BILL NUMBER: SB 388**

**NOTE PREPARED: Jan 3, 2015**

**BILL AMENDED:**

**SUBJECT:** Seizure and Forfeiture of Property.

**FIRST AUTHOR:** Sen. Hershman

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED: X GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Procedural Changes in Acquiring Seized Property* – It provides that when property is seized under the law concerning forfeiture of property used in violation of certain criminal statutes, the state or local law enforcement agency making the seizure shall: (1) identify the owner of the property; and (2) provide the owner with notice of the intent of the state or local unit of government to seek forfeiture of the property. It provides that if notice is not provided, the seized property shall be returned to the owner unless good cause for the delay can be established by the law enforcement agency.
- B. *Enhanced Standard of Proof for Seizing a Vehicle* – It requires a prosecuting attorney to show by clear and convincing evidence (currently a preponderance of the evidence) that the owner of a vehicle knew or had reason to know that the vehicle was being used in the commission of an offense before the vehicle may be forfeited.
- C. *Seizure of Real Property* – It provides that if real property that is used as a primary residence is seized, a prosecuting attorney must establish that the owner of the real property was convicted of an offense before the real property may be forfeited.
- D. *Seizure of Less than \$1,000 in Currency* – It establishes a rebuttable presumption that if property seized is currency totaling not more than \$1,000, the currency: (1) was not used or intended to be used in furtherance of an offense; or (2) is not the proceeds of an offense. It allows a prosecuting attorney to rebut this presumption by a show of clear and convincing evidence.
- E. *Defense to a Forfeiture Action* – It provides an affirmative defense to a forfeiture action if the owner of property can show by a preponderance of the evidence that: (1) the owner took reasonable actions to prevent the commission of an offense; or (2) the owner did not take action to prevent the

commission of an offense because the owner reasonably believed that to have done so would have placed the owner or another person in physical danger. It establishes a rebuttable presumption that property is not subject to forfeiture if: (1) an owner acquired the property after the commission of an offense; and (2) the owner did not know or had no reason to know of the involvement of the property in the offense. It allows a prosecuting attorney to rebut this presumption by a show of clear and convincing evidence.

- F. *Use of Seized Property* – It removes a provision that allows a law enforcement agency that seized forfeited property to use the property for not more than three years.
- G. *Dismissal of Forfeiture Actions* – It allows a court, on its own or on a motion made by the owner of property, to determine whether the forfeiture of the property would be disproportional to the offense that gave rise to the forfeiture. It requires the court to dismiss a forfeiture action if the court determines the forfeiture of the property is disproportional to the offense.

**Effective Date:** July 1, 2015.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** This bill could reduce the assets that the Indiana State Police can seize during criminal investigations. The specific reduction in the assets that could be seized will depend on the value of the property and whether defendants in these cases object to these seizures.

[Staff in the Indiana Supreme Court identified 16 petitions for asset seizures under IC 33-24-1 during both CY 2013 and CY 2014 by courts in counties that report cases in the Odyssey System. The Odyssey System accounts for 182 trial courts, 16 city courts, and 7 town courts in 50 counties. These represent 49% of all case filings in Indiana in 2013, the most recent year that this information is available.]

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** Local law enforcement agencies could also see a reduction in the value of assets that they could seize as a result of this bill.

**State Agencies Affected:** Indiana State Police.

**Local Agencies Affected:** Prosecuting attorneys; Local law enforcement agencies.

**Information Sources:**

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.